

BLOOD HURST & O'REARDON, LLP  
 TIMOTHY G. BLOOD (149343)  
 LESLIE E. HURST (178432)  
 THOMAS J. O'REARDON II (247952)  
 701 B Street, Suite 1700  
 San Diego, CA 92101  
 Tel: 619/338-1100  
 619/338-1101 (fax)  
 tblood@bholaw.com  
 lhurst@bholaw.com  
 toreardon@bholaw.com

BONNETT, FAIRBOURN, FRIEDMAN  
 & BALINT, P.C.  
 ANDREW S. FRIEDMAN (AZ 005425)  
 ELAINE A. RYAN (AZ 012870)  
 PATRICIA N. SYVERSON  
 (CA 203111; AZ 020191)  
 2325 E. Camelback Road, Suite 300  
 Phoenix, AZ 85016  
 Tel: 602/274-1100  
 602/798-5860 (fax)  
 afriedman@bffb.com  
 eryan@bffb.com  
 psyverson@bffb.com

Co-Lead Class Counsel

[Additional Counsel Appear On Signature Page]

**UNITED STATES DISTRICT COURT**  
**SOUTHERN DISTRICT OF CALIFORNIA**

IN RE HYDROXYCUT  
 MARKETING AND SALES  
 PRACTICES LITIGATION

Case No.: 3:09-MD-02087-BTM(KSC)

ANDREW DREMAK, on Behalf of  
 Himself, All Others Similarly  
 Situated and the General Public,

Case No.: 3:09-CV-01088-BTM(KSC)

Plaintiff,

**PLAINTIFF'S FURTHER RESPONSE  
 IN SUPPORT OF FINAL APPROVAL  
 OF CLASS ACTION SETTLEMENT**

vs.

IOVATE HEALTH SCIENCES  
 GROUP, INC., *et al.*,

Date: June 20, 2013  
 Time: 10:00 a.m.  
 Dept.: 15  
 Judge: Hon. Barry T. Moskowitz

Defendants.

1 Plaintiff Andrew Dremak submits this response in further support of the  
 2 pending motion for final approval of class action settlement. *See* Dkt. Nos. 201-  
 3 201-30, 207. Good cause exists for this brief supplement given the recent  
 4 “firing” of Darrell Palmer, previous counsel of record for objector Sasha  
 5 McBean, and the appearance of Ms. McBean’s new counsel, Kendrick Jan. *See*  
 6 Dkt. No. 227. This information goes to the issue of motivation in filing and  
 7 continuing to press the sole objection to this settlement. This settlement has been  
 8 well received by the members of the Class, including Ms. McBean. It was only  
 9 after speaking with Mr. Palmer that Ms. McBean allowed an objection to be filed  
 10 in her name. Even so, other than the amount of attorneys’ fees and that she did  
 11 not like that defendants falsely advertised their products, Ms. McBean had no  
 12 objection to the settlement, until her new counsel instructed her on objections  
 13 during a break in the evidentiary hearing.

14 At the last hearing, her new counsel, Mr. Jan, claimed to be new to class  
 15 actions and objections. In fact, he is not new to the serial objector game. He and  
 16 his wife are close to Darrell Palmer and, like Mr. Palmer’s other family  
 17 members, have both lent their names to objections brought and then later  
 18 dismissed, presumably in return for a payoff.

19 In 2010, Mr. Palmer and Mr. Jan worked together in objecting to the class  
 20 action settlement in *Droste v. Farmers Ins. Exchange*, No. CV-2004-294-3 (Ark.  
 21 Cir. Ct. Miller County). *See* Exs. A-C (relevant excerpts of the docket from  
 22 *Droste*). On December 27, 2010, an objection on behalf of Mr. Jan was filed,  
 23 listing Mr. Palmer as attorney of record. Ex. A (*Droste* Palmer Objection). On  
 24 January 7, 2011, Mr. Palmer filed a motion to intervene on behalf of Mr. Jan. Ex.  
 25 B (*Droste* motion to intervene).<sup>1</sup> One week later, Mr. Jan’s objections and  
 26

27 <sup>1</sup> Notably, just as they did here, Chris Bandas (counsel for objector Blanchard)  
 28 filed objections on behalf of a separate objector and moved for admission *pro*  
*hac vice*. *See* Exs. D (*Droste* Bandas objections) and E (Bandas *Pro Hac*).

1 motion to intervene were withdrawn without explanation. Ex. C.

2 On January 13, 2011, while their objections were still active in *Droste*, Mr.  
3 Palmer filed a motion for *pro hac vice* to represent Mr. Jan in the related class  
4 action, *Lindquist v. Farmers Group, Inc.*, No. 06-cv-597 (D. Az.). See Ex. G.

5 Mr. Palmer is also currently working with the Jan family (including Jill  
6 Jan, Kendrick's wife, and their adult son, Hondo Jan) in objecting to the  
7 settlement in *In re Flonase Antitrust Litig.*, No. 08-3301 (E.D. Pa.). In *Flonase*,  
8 Judge Anita Brody ordered Mr. Palmer, Palmer's local counsel, Hondo Jan, and  
9 Jill Jan to produce documents and sit for deposition. See Ex. H. Mr. Palmer,  
10 Hondo Jan, and Jill Jan ignored the Court's order and failed to produce any  
11 documents or appear for deposition. Subsequently, the local counsel hired by  
12 Mr. Palmer moved to withdraw as counsel after Mr. Palmer simply stopped  
13 responding to them. See Ex. I.

14 The court in *Flonase* subsequently ordered Mr. Palmer, Jill Jan and Hondo  
15 Jan to show cause why sanctions should not be imposed for their failure to  
16 comply with the Court's prior order to produce documents and sit for deposition.  
17 See Ex. J. Once again, none of them responded to the order. At a subsequent  
18 hearing on whether to impose sanctions, the *Flonase* court's clerk testified that  
19 she received a call from Mr. Palmer who "said something to the effect of that that  
20 the Court – that this Chambers did not understand either anti-trust law or class  
21 action law." See Ex. K (hearing transcript at 7). The clerk explained that Mr.  
22 Palmer was "discourteous." *Id.* On June 19, 2013, the *Flonase* court found that  
23 the Jans and Palmer had not presented any evidence of class membership and the  
24 objections lacked merit. The motion for sanctions in *Flonase* is pending.

25 Mr. Jan's substitution of counsel in this matter is not surprising given his  
26 (and his family's) and Mr. Palmer's combined efforts over the years to disrupt

27 The class plaintiffs in *Droste* opposed Mr. Bandas' *pro hac vice* admission.  
28 Ex. F.

1 settlements, not to make them better, but to get paid. This motivation is not well-  
 2 taken and should be considered by the Court in determining the validity of the  
 3 objections filed.

4 Finally, attached as Exhibit L is the objection Mr. Palmer filed in *Lemus v.*  
 5 *H&R Block Tax and Business Services, Inc.*, Case No. 09-3179 (N.D. Cal.). The  
 6 *Lemus* case was a case for which Ms. McBean was soliciting objectors through  
 7 her Facebook account. Ms. McBean solicited objectors on the last day to file  
 8 objections, and Mr. Palmer filed his objection that day. Similarly, in the other  
 9 case in which Ms. McBean solicited objections from her Facebook account,  
 10 *Walker v. Discover Financial Services*, Case No. 10-6994 (N.D. Ill.), Ms.  
 11 McBean solicited objections on the last day objections were due but neither she  
 12 nor Mr. Palmer were able to find a class member.

13 Respectfully submitted,

14  
 15 Dated: June 19, 2013

BLOOD HURST & O'REARDON, LLP  
 TIMOTHY G. BLOOD  
 LESLIE E. HURST  
 THOMAS J. O'REARDON II

18 By: s/ Timothy G. Blood  
 19 TIMOTHY G. BLOOD

20 701 B Street, Suite 1700  
 21 San Diego, CA 92101  
 22 Tel: 619/338-1100  
 23 619/338-1101 (fax)  
 24 tblood@bholaw.com  
 25 lhurst@bholaw.com  
 26 toreardon@bholaw.com

27 BONNETT, FAIRBOURN, FRIEDMAN  
 28 & BALINT, P.C.  
 ANDREW S. FRIEDMAN (AZ 005425)  
 ELAINE A. RYAN (AZ 012870)  
 PATRICIA N. SYVERSON  
 (CA 203111; AZ 020191)  
 2325 E. Camelback Road, Suite 300  
 Phoenix, AZ 85016  
 Tel: 602/274-1100  
 602/798-5860 (fax)

afriedman@bffb.com  
eryan@bffb.com  
psyverson@bffb.com

*Co-Lead Class Counsel*

BLOOD HURST & O'REARDON, LLP

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

**CERTIFICATE OF SERVICE**

I hereby certify that on June 19, 2013, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the e-mail addresses denoted on the Electronic Mail Notice List, and I hereby certify that I have mailed the foregoing document or paper via the United States Postal Service to the non-CM/ECF participants indicated on the Electronic Mail Notice List.

I certify under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on June 19, 2013.

*s/ Timothy G. Blood*

TIMOTHY G. BLOOD

BLOOD HURST & O'REARDON, LLP  
701 B Street, Suite 1700  
San Diego, CA 92101  
Telephone: 619/338-1100  
619/338-1101 (fax)  
tblood@bholaw.com